

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 02-493-A
	)	
CHRISTOPHER O. WRIGHT,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

The United States and the defendant, Christopher O. Wright, agree that had this matter proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

1. On or about January 11, 2001, America Online, Inc., and Time Warner, Inc., merged to form a new corporation, AOL Time Warner, Inc. Existing shares and options to purchase shares of America Online were exchanged for shares and options to purchase shares of AOL Time Warner. America Online and AOL Time Warner are hereinafter referred to as "AOL."

2. On May 31, 1999, AOL hired Wright as a member services representative in AOL's Jacksonville, Florida call center. His employment was terminated on November 30, 2001. The last known address for Wright as shown in AOL's employment records was 1092 Sea Hawk Drive North, Ponte Verda, Florida.

3. On September 1, 1999, AOL granted Wright 200 options (adjusted for split) to purchase shares of AOL vesting over a period of four years. The first 50 options from this grant vested on September 1, 2000, and the second 50 options vested on September 1, 2001. On September 1, 2000, AOL granted Wright 66 options to purchase shares of AOL vesting over a period of four years. The first 16 options from this grant vested on September 1, 2001. When options are

granted to an AOL employee, the employee receives a “Notice of Grant of Stock Options,” which includes the number of options granted, the vesting schedule, and certain terms and conditions of the options grant. Employees are required to acknowledge receipt of the notice by signing the notice. By 2000, AOL employees could view their notices on AOL’s intranet and execute an electronic signature equivalent. According to AOL records, Wright acknowledged and electronically signed his two options grants of a total of 266 shares on September 13, 2000.

4. By mid-May 1999, AOL employees could review their stock options by accessing an Internet website provided by E\*TRADE Securities, Inc., in or near West Sacramento, California. All AOL employees were assigned an E\*TRADE account number and provided with a login name that corresponded to their social security number and a randomly generated password for this purpose. Additionally, employees could choose to “activate” their E\*TRADE OptionsLink accounts in order to exercise their AOL options and sell the shares of common stock obtained through the exercise of those options. All employees received an account activation form preprinted with their name, employment address, and their E\*TRADE account number.

5. E\*TRADE records show that in 2000 and 2001 there was an OptionsLink account registered to Christopher O. Wright with an address of 1092 Sea Hawk Drive North, Ponte Verda, Florida. The account activation form for the account was filled out with Christopher O. Wright’s, address, date of birth, and social security number, and submitted to E\*TRADE on or about January 25, 2000. The preprinted information on the form, however, including the E\*TRADE account number, relates to a Loudoun County, Virginia AOL employee with a similar name (hereinafter, “Victim A”). When E\*TRADE received the form, E\*TRADE activated Victim A’s account but assigned Christopher O. Wright’s name and address to the account. At this time, the defendant was not aware that E\*TRADE had sent him another employee’s account information.

6. In 2000 and 2001, Victim A had tens of thousands of vested options to purchase tens of thousands of shares of AOL common stock. At the time of his termination in November 2001, Christopher O. Wright had been granted a total of 266 options, but only 116 of those had vested.

7. The defendant initiated the following transactions in AOL shares in Victim A's E\*TRADE Options Link account from October 5, 2000, to October 10, 2001:

<u>DATE</u>	<u>OPTIONS EXERCISED AND SHARES SOLD</u>	<u>PRICE OF AOL SHARES AT SALE</u>	<u>TOTAL OF SALE</u>
10/5/2000	100	\$61.78	\$ 6,178.00
1/24/2001	100	\$56.30	\$ 5,630.00
3/20/2001	300	\$40.50	\$ 12,150.00
4/17/2001	200	\$43.38	\$ 8,676.00
4/17/2001	200	\$43.53	\$ 8,706.00
7/23/2001	600	\$45.00	\$ 27,000.00
8/23/2001	200	\$40.20	\$ 8,040.00
10/10/2001	300	\$32.50	\$ 9,740.00
	=====		=====
	2,000		\$ 86,120.00

The proceeds from the October 5, 2000 transaction were sent by check to Christopher O. Wright at 1092 Sea Hawk Drive North, Ponte Verda, Florida 32082. The check was deposited into an account at the JAX Navy Federal Credit Union in Jacksonville, Florida, in the name of Christopher O. Wright of 1092 Sea Hawk Drive North, Ponte Verda Beach, Florida 32082. The proceeds of all of the other transactions were transferred by wire from E\*TRADE in California to the same JAX Navy Federal Credit Union account in Jacksonville, Florida. After deductions for commissions, fees, taxes, and the cost to exercise the options (\$18,168), the net proceeds received by the defendant totaled \$38,911.64; the total loss to Victim A, based on the aggregate value of the options on the dates the options were exercised, was \$67,952 (\$86,120 - \$18,168).

8. The October 5, 2000 transaction was initiated as a result of instructions received by telephone while all of the other transactions were initiated as a result of instructions received through E\*TRADE's Internet website.

9. The instructions sent to E\*TRADE as described in paragraphs 7 and 8 resulted in a series of transactions and communications. First, E\*TRADE sold the designated number of shares of AOL at the market price, which obligated E\*TRADE to deliver the designated number of shares on the settlement date (three business days after the date of the trade). This transaction also created a short-term margin loan for the amount needed to purchase new AOL shares by the settlement date. Second, E\*TRADE notified AOL that Victim A had exercised options by posting the information on a secure, dedicated website. AOL employees in Loudoun County, Virginia, accessed the website daily and compared the information provided by E\*TRADE regarding all options exercised (and shares sold) on that day to AOL's stock option records. If the employees attempting to exercise options had sufficient vested options to exercise, AOL employees in Loudoun County, Virginia, would confirm the transactions on E\*TRADE's secure, dedicated website and provide E\*TRADE with the amounts to be paid to AOL for the newly issued shares and the amounts of the sale proceeds to be withheld for taxes. The next business day after the transaction was initiated, AOL employees in Loudoun County, Virginia, instructed the company's stock transfer agent, Equiserve, to issue new shares of AOL common stock corresponding to the total number of options exercised through E\*TRADE and to transfer registered ownership of those shares to E\*TRADE. These instructions were sent by facsimile from Loudoun County, Virginia, over interstate telephone lines to Equiserve in Boston, Massachusetts. E\*TRADE then caused the newly issued shares to be transferred to the purchasers' brokers on the settlement dates, received the proceeds of the sales, deducted its commissions and the SEC fees from the proceeds, and transferred the remainder of the proceeds to

AOL (both the option exercise price and the employees' withholding for taxes) and the employees in accordance with the instructions of AOL and the employees. These transactions and communications, to the extent they related to the transactions described in paragraph 7 and 8, were caused by Wright's instructions and, had they not occurred, the proceeds of the transactions that Wright initiated in Victim A's account would not have been transferred to him.

10. Victim A, whose options were exercised as described in paragraphs 7 and 8, did not authorize the transactions nor did he receive any proceeds from them. He does not and has never had an account with JAX Navy Federal Credit Union in Jacksonville, Florida.

11. Victim A discovered the transactions described in paragraphs 7 and 8 when he noticed information regarding the exercise of options on one of his AOL pay stubs. Victim A, who had never exercised any of his options, then brought the matter to the attention of AOL officials in October or November 2001. AOL's investigation revealed that Christopher O. Wright, who was then still employed by AOL in the Jacksonville call center, was exercising control over Victim A's account. Dan Martella, a senior human resources manager with AOL in Jacksonville, Florida, met with Wright on November 29, 2001, to discuss the matter. Wright stated that he logged into the account and that he had noticed that he had a large number of options in the account. When asked whether he notified anyone at AOL of the discrepancy, he said that he had not. He then stated that he had exercised options and sold shares from the account. AOL terminated Wright's employment the following day.

Respectfully submitted,

PAUL J. MCNULTY  
UNITED STATES ATTORNEY

By: \_\_\_\_\_

Michael J. Elston  
Assistant United States Attorney

Defendant's Stipulation and Signature

After consulting with my attorney and pursuant to the plea agreement I entered into this day with the United States, I hereby stipulate that the above statement of facts is true and accurate. I further stipulate that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Date: \_\_\_\_\_  
Christopher O. Wright  
Defendant

Defense Counsel's Signature

I am Christopher O. Wright's attorney. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Date: \_\_\_\_\_  
Michael Nachmanoff  
Counsel to the Defendant